

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

JACK C. CHILINGIRIAN,

Petitioner,

v.

Civil File No. 05-cv-10005-RCL

DAVID L. WINN, WARDEN,

Hon. Reginald C. Lindsay, USDJ

Respondent.

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**MOTION TO SET ASIDE ORDER OF DISMISSAL AND  
REINSTATE CAUSE OF ACTION FOR HABEAS RELIEF**

NOW COMES the above named Petitioner, JACK C. CHILINGIRIAN, and hereby files the above entitled Motion and in support states as follows:

1. On January 3, 2005, the Petitioner, JACK C. CHILINGIRIAN, then a prisoner at the Federal Medical Center (Camp Devens) commenced the above entitled action pursuant to 28 USC Sec. 2241 seeking relief relative to the miscalculation of good time credits made by the Respondent, David L. Winn.
2. On March 9, 2005, Respondent filed a Motion to Dismiss.
3. On March 24, 2005, the Petitioner was released from custody pursuant to an Order for Bail entered by the U.S. District Court for the Eastern District of Michigan. This Order was as a result of the Supreme Court vacating and remanding the case pursuant to its decision in United States v. Booker.
4. On April 20, 2005, the Petitioner filed his response to the Respondent's Motion to Dismiss.

5. On August 28, 2005, Petitioner was resentenced to the original 87 month sentence of incarceration, with the directive to self-surrender to the Bureau of Prisons which he has done on October 18, 2005.
6. On October 6, 2005, pursuant to an electronic order, the Hon. Reginald C. Lindsay, USDJ directed the Clerk of the Court to Dismiss the above captioned case as moot. (SEE EXHIBIT "A" attached).
7. On October 11, 2005, the Petitioner received a copy of the electronic order from the Office of the Clerk of the Court.
8. Petitioner immediately sent an e-mail to counsel representing the Respondent seeking her concurrence in the relief requested in the instant Motion, to which a reply was received on October 12, 2005, indicating that no consent was forthcoming for reinstatement of the above captioned case. (SEE EXHIBIT "B" attached).
9. The Petitioner has now reported to the BOP at Camp Devens and is in custody pursuant to the imposition of the same sentence upon which the good time credits have been calculated and therefore "there is [a] live issue..before the Court" that should be resolved on the merits.
10. Setting aside the Order of Dismissal would be fair and equitable since the Court acted on the pending Motion without benefit of the knowledge that Petitioner had been resentenced to the same term of custody

11. That Reinstatement of the Case would prevent further delay in acting upon the merits of the claims filed by the Petitioner.
12. The pleadings filed to date have joined the issue between the parties and the Court can act promptly in deciding the case as presently framed.
13. No prejudice would result to the parties or to the Court if the Order of Dismissal would be set aside and the instant action reinstated.
14. Petitioner as noted above has sought concurrence in the instant Motion and the requested relief has been denied.
15. The request for relief is fair and reasonable under the circumstances as recited above.

WHEREFORE, the Petitioner respectfully requests the entry of an Order setting aside the October 6, 2005 electronic order of Dismissal and the entry of an Order Reinstating the above captioned case top the Docket of the Court.

RESPECTFULLY SUBMITTED



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JACK C. CHILINGIRIAN  
22512-039 Unit I (Camp)  
Federal Medical Center Devens  
P.O. Box 879  
AYER, MA. 01432

DATED: October 18, 2005

**CERTIFICATE OF SERVICE**

I, JACK C. CHILINGIRIAN, hereby certify that on the 18<sup>th</sup> day of October, 2005, I sent a copy of the **MOTION TO SET ASIDE ORDER OF DISMISSAL AND REINSTATE CAUSE OF ACTION FOR HABEAS RELIEF** to the office of JENNIFER C. BOAL, AUSA at 1 Courthouse Way Suite 9200, Boston, MA. 02210 in an envelope sent first-class mail with postage pre-paid.

RESPECTFULLY SUBMITTED,



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JACK C. CHILINGIRIAN  
22512-039 UNIT I (Camp)  
FEDERAL MEDICAL CENTER DEVENS  
P.O. BOX 879  
AYER, MA. 01432

DATED: October 18, 2005

United States District Court

District of Massachusetts

Notice of Electronic Filing

The following transaction was received from Lindsay, Reginald entered on 10/6/2005 at 4:55 PM EDT and filed on 10/6/2005

Case Name: Chilingirian v. Winn

Case Number: 1:05-cv-10005

Filer:

Document Number:

Docket Text:

Judge Reginald C. Lindsay : ElectronicORDER entered finding as moot [13] Motion to Dismiss. The petitioner has indicated, in response to this motion, and that he has been released on bail from the custody of the Bureau of Prisons pending resentencing under Booker. Because the resentencing may result in entirely new provisions as to imprisonment and supervised release, there is no live issue now before the court regarding the calculation of good time credits. The clerk shall enter an order dismissing this petition as moot. (Lindsay, Reginald)

The following document(s) are associated with this transaction:

1:05-cv-10005 Notice will be electronically mailed to:

Jennifer C. Boal jennifer.boal@usdoj.gov

1:05-cv-10005 Notice will not be electronically mailed to:

Jack C. Chilingirian  
20 Crescent Lane  
Brewster, MA 02631

Exhibit "A"

*YACCHIL*

Print - Close Window

Date: Mon, 12 Oct 2005 14:51:29 -0400 (EDT)  
 From: Jennifer Boal [mailto:jboal@usdoj.gov] <jennifer.boal@usdoj.gov>  
 Subject: RE: Chilingirian v. Winn  
 To: "jccchil@yahoo.com" <jccchil@yahoo.com>

Mr. Chilingirian -

I do not consent to the proposed motion to reinstate as I believe that the correct way to proceed is for a new action to be filed after your return to BOP custody.

Jennifer C. Boal

-----Original Message-----

From: jccchil@yahoo.com [mailto:jccchil@yahoo.com]  
 Sent: Tuesday, October 11, 2005 4:09 PM  
 To: Boal, Jennifer  
 Subject: Chilingirian v. Winn

Ms. Boal:

I received a copy of the Electronic ORDER entered by Judge Lindsay earlier today.

On August 25, 2005 the U.S. District Judge in Detroit, Michigan resentedenced me to

the same 87 month sentence previously imposed. I will be reporting back to Camp

Devens on October 17, 2005. Obviously this makes my case NOT MOOT but very

much a live one with the issues raised that should be decided by the Court. Will you stipulate

to a Motion for Reinstatement which I intend to file?? Please advise so that my pleadings

will reflect your position. Thank you for your attention in this regard.

Jack C. Chilingirian

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*Exhibit "B"*